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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180205129-8129-01]

RIN 0648-BH50

Atlantic Highly Migratory Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule makes editorial corrections amending the regulations for Atlantic highly migratory species (HMS). This final action will make the rules easier to use by making the cross-references in the regulations accurate, correcting grammatical and punctuation issues, and reformatting the regulations where needed to be consistent with **Federal Register** guidelines. The action also in several instances simplifies regulatory text by removing unnecessary language. The rule is administrative in nature and does not make any change with substantive effect to the regulations for HMS fisheries.

DATES: This final rule is effective on *[insert date of publication in the Federal Register]*.

ADDRESSES: Documents related to HMS fisheries management, such as the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, are available from the

HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or upon request from the HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Larry Redd, or Karyl Brewster-Geisz by phone at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, (ATCA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) regulations implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries; these management measures have been amended or otherwise modified numerous times. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

The regulations at 50 CFR part 635 are promulgated under ATCA and the Magnuson-Stevens Act for the conservation and management of Atlantic highly migratory species, including species of tunas, billfish, sharks, and swordfish. In 2006, NMFS consolidated Atlantic HMS management into one fishery management plan, the 2006 Consolidated HMS FMP. Since then, NMFS has amended the FMP ten times through the fishery management plan amendment process and has made numerous other regulatory changes through framework actions. With this

volume of regulatory action, some small grammatical and other errors have accumulated over time. As described in the sections below, this technical amendment corrects grammatical, punctuation, consistency, cross-reference errors in the HMS regulations at 50 CFR part 635. As explained in the Consistency section below, it also simplifies regulatory text by removing unnecessary language in several limited instances.

Typographical Corrections

The following grammatical, punctuation, or clerical errors (*i.e.*, typographical errors) in the HMS regulations are corrected by this final rule:

The definition of “CK” at § 635.2 does not spell out the words for which it is an acronym. This final action therefore adds “Cleithrum to Caudal Keel” before the acronym “CK.” The definition of “Hammerhead Sharks” at § 635.2 capitalizes the word “shark(s).” This final action changes to lowercase the word “shark(s).” The regulation at § 635.4(l)(2)(viii) does not capitalize the word “tunas” in the permit title, “Atlantic Tunas Longline category LAP” This final action capitalizes the word “Tunas.” The regulation at § 635.5(b)(1)(i) has commas incorrectly after the words “all” and “swordfish” in the sentence, “All reports must be species-specific and must include the required information about all, swordfish, and sharks received by the dealer.” This final action removes the misplaced commas. The regulation at § 635.5(c)(2) is missing apostrophes and has extra parentheses in three places where the text should read, “owner’s designee.” This final action adds apostrophes and removes the mistaken parentheses to correct this text. The regulations at § 635.6(b)(1)(ii) and (c)(1) do not capitalize the word

“Arabic.” This final action corrects this error and capitalizes “Arabic.” The regulation at § 635.9(e)(4) has two commas rather than one after the words “trip” and “e.g.” This final action removes the extra commas. The regulation at § 635.14(b)(1) uses two different styles of quotation marks around the words “bluefin tuna ratio.” This final action changes the quotation marks so that they are the same and removes the colon within this regulation. The regulation at § 635.14(b)(1) incorrectly capitalizes the word “Swordfish.” This final action changes “Swordfish” to “swordfish.” The regulation at § 635.15(c)(3)(iv) is missing the word “year” and has an extra period at the end of the first sentence. This final action adds the word “year” and removes the extra period. Additionally, this regulation incorrectly capitalizes the words “Eastern Time.” This final action changes “Eastern Time” to “eastern time.” The regulation at § 635.21(g)(1) uses “NOAA Fisheries,” and the final action changes it to “NMFS” for consistency across the regulations. The regulation at § 635.27(d)(1) incorrectly uses the word “this” in the second sentence. This final action changes “this” to “the.” Additionally, this final action removes outdated language regarding an effective date of January 1, 2007 from § 635.27(d)(1). Additionally, for § 635.28(d), this final action capitalizes the lower case “n” for the species Northern albacore tuna.

The regulations at §§ 635.2, 635.4(e)(3) and (g)(2), 635.21(d)(2)(ii), 635.27(b)(1), 635.28(b)(1)(iv), and 635.34(c) do not consistently capitalize the word “Table” and lowercase the word “appendix” in the phrase, “Table 1 of appendix A to this part.” This final action corrects the references to “Table 1 of appendix A to this part” in §§ 635.2, 635.4(e)(3) and

(g)(2), 635.21(d)(2)(ii), 635.27(b)(1), 635.28(b)(1)(iv), and 635.34(c) so that capitalization and phrasing are consistent throughout.

Limited Access Permit Corrections

The HMS regulations at § 635.2 currently provide a definition for “LAP,” defining it as an acronym for the “limited access permit.” The HMS regulations do not consistently use the acronym, however, and still refer to “limited access permits” or “limited access vessel permits” sometimes in the regulations. Consistency across the regulations would make them clearer. The regulations at §§ 635.4(a)(3), (d)(4), (e)(2) through (4), (f)(1), (2), (4), and (5), (h)(2), (l)(2)(ii)(A) through (C), (l)(2)(iii) through (ix), and (m)(2), 635.8(a)(1) and (3), (c)(2) and (3), 635.15(k) introductory text and (k)(4)(iii), 635.19(e)(4), 635.21(b)(1), (c)(3) and (4), (c)(5)(iii)(A) and (B), (g)(2) and (3), 635.27(c)(1)(i)(A) and (B), 635.28(a)(3), and 635.71(a)(53) and (e)(10) and (11) do not use the acronym “LAP” for “limited access permit.” This final action changes “limited access permit” to “LAP” so that the acronym defined at § 635.2 is used consistently across the HMS regulations. The regulations at §§ 635.15(k) and (l)(4)(iii) and 635.21(c)(5)(iii)(B) incorrectly use the word “permit” or “permitted” instead of the acronym “LAP” when referring to the Atlantic Tunas Longline category limited access permit. For consistency within the regulations referring to the Atlantic Tunas Longline category limited access permit, this final action changes the word “permit” or “permitted” to “LAP.” The regulations at §§ 635.4(l)(2)(iii) and 635.21(b)(1) incorrectly name a permit as “tuna longline LAPs.” This final action corrects the permit name to “Atlantic Tunas Longline category LAP.”

The regulations at §§ 635.21(c)(5)(iii)(A) and 635.71(a)(40) and (b)(36) through (38), incorrectly list a permit name as “tunas Longline category permit.” This final action corrects the permit name to “Atlantic Tunas Longline category LAP.” The regulations at § 635.15(k) improperly exclude the word “category” from the permit name, “Atlantic Tunas Longline category LAP.” This final action corrects the error by adding the word “category.” The regulations at § 635.23(a)(2) incorrectly list the permit as “General category Atlantic Tunas permit.” This final action corrects the permit name to “Atlantic Tunas General category permit.” Additionally this final action removes language referring specifically to “one large medium or giant BFT per day” allowed to be caught or landed on days other than RFDs. Because NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five under cross reference § 635.23(a)(4), it is more clear to refer to the “daily retention limit in effect for that day.” The regulation at § 635.71(b)(20) incorrectly lists the relevant permit as “Purse Seine category Atlantic tuna permit.” This final action corrects the permit name to “Atlantic Tunas Purse Seine category LAP.”

Cross References Corrections

This final action corrects the incorrect cross references found in the definitions and regulations at §§ 635.2 (definitions of “Display Permit” and “EFP”), 635.4(a)(8) and (h)(1)(iii), 635.5(a)(5)(ii), 635.21(c)(5)(ii)(C)(*I*) and (c)(5)(iv), 635.28(b)(7), (c)(3), and (d), 635.31(d)(2), and 635.40(b)(1). Section 635.21(c)(5)(iv) references paragraphs (A), (B), (C), (G), (H), and (K) as specifying “[o]ther devices proposed for use as line clippers or cutters or de-hookers.” This

final action adds references to paragraphs (I) and (J) to that list. Additionally, §§ 635.22(c)(1) and (5) and (d) and 635.23(a)(2) and (4), have cross references that are broadly referenced and need to be more specific to the correct provision under part 635. This action corrects those cross references by adding the specific cross reference location (*e.g.*, within § 635.22(c)(1), changing the reference from § 635.4 to § 635.4(e)).

Consistency Corrections

Regulations at §§ 635.2 (definition of “Exporter”) and 635.4(a)(6) use a **Federal Register** citation format that is inconsistent with the citation format otherwise used in part 635. This final action revises the citation format for consistency purposes.

At § 635.4(c)(2), this final action changes the word “issued” to “with” to be more internally consistent.

At § 635.4(l)(2)(viii), this final action removes the word “an” to be more internally consistent.

The current regulations do not consistently refer to swordfish and shark LAPs, sometimes referring to them as “catch LAPs” and other times spelling out “limited access permit.” This inconsistency in terminology can lead to confusion. As such, this final action changes these swordfish and shark LAP references to be more internally consistent to clarify the regulations. Specifically, the regulations at § 635.4(l)(2)(viii) and (ix) use the phrase, “a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark.” This final action will correct the phrase to, “a directed or incidental swordfish LAP, a directed or incidental shark

LAP.” The regulations at § 635.4(l)(2)(viii) uses the phrase “a LAP for swordfish.” This final action corrects the phrase to “a swordfish LAP.” The regulations at § 635.4(l)(2)(viii) and (ix) uses the phrase “a directed or incidental catch shark LAP,” respectively. This final action corrects the phrase to “a directed or incidental shark LAP,” respectively. The regulations at § 635.4(l)(2)(ix) use the phrase “directed or incidental catch swordfish or shark LAP.” This final action will correct the phrase to “directed or incidental swordfish or shark LAP.” The regulation at § 635.22(f) uses the phrase “incidental or handgear limited access swordfish permit.” This final action will correct the phrase to “incidental or handgear swordfish LAP.”

The definition of “Fishing Year” at § 635.2 includes incorrect language left over from past definitions. The fishing year for all tunas, sharks, billfish, and swordfish is January 1 through December 31, as reflected in the 2006 Consolidated HMS FMP. This final action removes this outdated text and simplifies the definition for tunas, sharks, billfish and swordfish to match the dates established in previous actions, reading “January 1 through December 31.”

The first sentence at § 635.20(b) starts with the phrase, “The size class of a BFT found with the head removed shall be determined using...” This phrase, referring to a BFT that is “found,” is confusing and inconsistent with a similar regulation at § 635.20(f) (“For a swordfish that has its head naturally attached...”). This final action re-words the phrase found in § 635.20(b) to be less confusing and more consistent with the wording at § 635.20(f). With this change, § 635.20(b) will read, “If the head of a BFT is no longer attached, the size class of the BFT shall be determined using...”

The regulation at § 635.40(b)(3) references 19 CFR 10.79, the “Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries.” Section 10.79 no longer exists within title 19, and has instead been reserved. This final action removes language referencing this obsolete regulation and reserves this location. This change would not have any effect on the part 635 regulations since 19 CFR 10.79 has been amended and reserved.

Finally, the regulation at § 635.21(d)(1)(iii)(D) refers to out-of-date coordinates for the Charleston Deep Artificial Reef. This final action updates the old boundary coordinates for the Charleston Deep Artificial Reef to match the boundary changes that were recently made to the Charleston Deep Artificial Reef MPA via Snapper Grouper Amendment 36 (82 FR 29772, June 30, 2017).

Classification

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of U.S. fisheries and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. This final rule makes only corrective, non-substantive changes to regulatory text, adds missing cross-references and/or corrects cross-references to HMS regulations, and in several instances, removes unnecessary language, and is solely administrative

in nature. Therefore, public comment would serve no purpose and is unnecessary. Furthermore, it is in the public interest to revise the regulations as quickly as possible to reduce any potential confusion to the public of the regulatory requirements at 50 CFR part 635. Any delay in implementation would result in the continuation of this potential confusion. Thus, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, and a proposed rule is not being published, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act, because the action is purely administrative in nature by making editorial corrections or clarifications to existing regulatory text, with no substantive changes or effects.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 9, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, revise the definition of “Atlantic Aggregated LCS,” remove the definition of “CK,” add the definition of “Cleithrum to Caudal Keel or CK,” and revise the definitions of “Display permit,” “EFP,” “Exporter,” “Fishing year,” “Gulf of Mexico Aggregated LCS,” “Hammerhead Shark(s),” “Highly migratory species (HMS),” “Large coastal shark (LCS),” “Non-blacknose SCS,” “Pelagic shark,” “Prohibited shark,” “Research LCS,” “Small coastal shark (SCS),” and “Smoothhound shark(s)” to read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A to this part: Atlantic blacktip, bull, lemon, nurse, silky, spinner, and tiger.

* * * * *

Cleithrum to Caudal Keel or *CK* measurement means the length of a fish measured along the body contour, *i.e.*, a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

* * * * *

Display permit means a permit issued in order to catch and land HMS for the purpose of public display pursuant to § 635.32(d).

* * * * *

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32(c).

* * * * *

Exporter, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in 15 CFR part 30. An exporter is subject to the requirements of this subpart, even if exports are exempt

from statistical reporting requirements under 15 CFR part 30.

* * * * *

Fishing year means January 1 through December 31.

* * * * *

Gulf of Mexico Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A to this part: bull, lemon, nurse, silky, spinner, and tiger.

Hammerhead shark(s) means great, scalloped, and smooth hammerhead shark species, or parts thereof, as listed in Table 1 of appendix A to this part.

* * * * *

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Table 1 of appendix A to this part); white marlin; blue marlin; sailfish; longbill spearfish; and roundscale spearfish.

* * * * *

Large coastal shark (LCS) means one of the species, or a part thereof, listed in heading A, Large Coastal Sharks, of Table 1 of appendix A to this part.

* * * * *

Non-blacknose SCS means one of the species, or part thereof, listed in heading B, Small Coastal Sharks, of Table 1 of appendix A to this part other than the blacknose shark.

* * * * *

Pelagic shark means one of the species, or a part thereof, listed in heading C, Pelagic

Sharks, of Table 1 of appendix A to this part.

* * * * *

Prohibited shark means one of the species, or a part thereof, listed in heading D, Prohibited Sharks, of Table 1 of appendix A to this part.

* * * * *

Research LCS means one of the species, or part thereof, listed in heading A, Large Coastal Sharks, of Table 1 of appendix A to this part, other than sandbar sharks.

* * * * *

Small coastal shark (SCS) means one of the species, or a part thereof, listed in heading B, Small Coastal Sharks, of Table 1 of appendix A to this part.

* * * * *

Smoothhound shark(s) means one of the species, or part thereof, listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part.

* * * * *

3. In § 635.4, revise paragraphs (a)(3), (6), and (8), (c)(2), (d)(4), (e)(2) through (4), (f)(1), (2), (4), and (5), (g)(2), (h)(1)(iii), (h)(2), (l)(2)(ii)(A) through (C), (l)(2)(iii) through (ix), and (m)(2) to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(3) *Property rights.* LAPs or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, LAPs represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

* * * * *

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at 15 CFR part 904, subpart D.

* * * * *

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (a)(9) of this section, may be charged for issuance of the replacement permit.

* * * * *

(c) * * *

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section or with a valid Swordfish General Commercial permit issued under paragraph (f) of this section may fish in a recreational HMS fishing tournament if the vessel has registered

for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel with a valid Atlantic Tunas General category permit or a valid Swordfish General Commercial permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraphs (c)(3) through (5) of this section.

* * * * *

(d) * * *

(4) A person can obtain an Atlantic Tunas Longline category LAP for a vessel only if the vessel has been issued both a LAP for shark and a LAP, other than handgear, for swordfish. Atlantic Tunas Longline category LAPs may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

* * * * *

(e) * * *

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in headings A, B, or C of Table 1 of appendix A to this part with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental LAP or an HMS Commercial Caribbean Small Boat permit. The only valid Federal commercial shark directed and shark incidental LAPs are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) A vessel owner issued or required to be issued a Federal Atlantic commercial shark

directed or shark incidental LAP may harvest, consistent with the other regulations in this part, any shark species listed in headings A, B, or C of Table 1 of appendix A to this part.

(4) Owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part with an intention to sell them must obtain a Federal commercial smoothhound permit. In addition to other permits issued pursuant to this section or other authorities, a Federal commercial smoothhound permit may be issued to a vessel alone or to a vessel that also holds either a Federal Atlantic commercial shark directed or incidental LAP.

(f) * * *

(1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or from which swordfish are sold, must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed LAP, swordfish incidental LAP, swordfish handgear LAP, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear LAP on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the

swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

* * * * *

(4) A directed or incidental swordfish LAP is valid only when the vessel has on board a valid shark LAP and a valid Atlantic Tunas Longline category LAP issued for such vessel.

(5) A Swordfish General Commercial permit may not be held on a vessel in conjunction with an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Angling category permit issued under paragraph (c) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section. A vessel issued a Swordfish General Commercial open access permit for a fishing year shall not be issued an HMS Angling permit or an HMS Charter/Headboat permit for that same fishing year, regardless of a change in the vessel's ownership.

(g) * * *

(2) *Shark*. A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of appendix A to this part except as noted under paragraph (o) of this section.

* * * * *

(h) * * *

(1) * * *

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(6) of this section.

* * * * *

(2) *LAPs for swordfish and shark*. See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

* * * * *

(1)* * *

(2)* * *

(ii)* * *

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial LAP or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) Subsequent to the issuance of a swordfish handgear LAP, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a swordfish handgear LAP, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed, or Atlantic Tunas Longline category LAPs have been issued.

(iv) In order to transfer a swordfish, shark, or an Atlantic Tunas Longline category LAP to a replacement vessel, the owner of the vessel issued the LAP must submit a request to NMFS, at an address designated by NMFS, to transfer the LAP to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid LAP to NMFS with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and Atlantic Tunas Longline category LAP transfers to a

different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original LAP(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for LAP transfers involving vessels.

(vi) For LAP transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and LAP(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s) LAP(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the LAP(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a LAP(s) who sells the permitted vessel but retains the LAP(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the LAP(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are

required to retain swordfish for commercial purposes. Accordingly, a swordfish LAP obtained by transfer without either a directed or incidental shark LAP or an Atlantic Tunas Longline category LAP will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category LAP obtained by transfer without either a directed or incidental swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m)* * *

(2) *Shark and swordfish permits.* A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid

Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/ Headboat permit with a commercial sale endorsement is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish LAP(s) in the preceding year are eligible to renew those LAP(s). Transferors may not renew LAP(s) that have been transferred according to the procedures in paragraph (l) of this section.

* * * * *

4. In § 635.5, revise paragraphs (a)(5)(ii), (b)(1)(i), and (c)(2) to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(5) * * *

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in § 635.32(e)

and (g). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued a Federal Atlantic BAYS tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraph (b)(1)(ii) of this section. BAYS tunas, swordfish, and sharks commercially-harvested by a vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4. All federal Atlantic HMS dealers must provide a detailed report of all fish first received to NMFS within the period specified under paragraph (b)(1)(ii) of this section. All reports must be species-specific and must include the required information about all swordfish and sharks received by the dealer, including the required vessel information, regardless of where the fish were harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total

weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit “negative” reports, indicating no receipt of any species, within the timeframe specified under paragraph (b)(1)(ii) of this section if they did not first receive any fish during the reporting period. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

* * * * *

(c) * * *

(2) *Non-tournament landings.* The owner, or the owner’s designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, roundscale spearfish, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner’s designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner’s designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner’s designee, has received a confirmation number from NMFS or a NMFS designee.

* * * * *

5. In § 635.6, revise paragraphs (b)(1)(ii) and (c)(1) to read as follows:

§ 635.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(ii) In block Arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

* * * * *

(c) * * *

(1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number, or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or Arabic numerals in a color that contrasts with the background color of the float or high-flyer.

* * * * *

6. In § 635.8, revise paragraphs (a)(1) and (3) and (c)(2) and (3) to read as follows:

§ 635.8 Workshops.

(a) * * *

(1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish LAP, pursuant to § 635.4(e) and (f), is renewed. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

* * * * *

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish LAP.

* * * * *

(c) * * *

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a)(1) of this section, the vessel owner may not renew a shark or swordfish LAP, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a)(1) of this section and that has been, or should be, issued a valid LAP pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

* * * * *

7. In § 635.9, revise paragraph (e)(4) to read as follows:

§ 635.9 Electronic monitoring.

* * * * *

(e) * * *

(4) *Completion of trip.* Within 48 hours of completing a fishing trip, the vessel owner or operator must mail the removable EM system hard drive(s) containing all data to NMFS or NMFS-approved contractor, according to instructions provided by NMFS. The vessel owner or operator is responsible for using shipping materials suitable to protect the hard drives (*e.g.*, bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the vessel owner or operator. Prior to departing on a subsequent trip, the vessel owner or operator must install a replacement EM

system hard drive(s) to enable data collection and video recording. The vessel owner or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP.

* * * * *

8. In § 635.14, revise paragraph (b)(1) to read as follows:

§ 635.14 Performance metrics.

* * * * *

(b) * * *

(1) *Bluefin tuna interactions performance metric.* The basis for the bluefin tuna interactions performance metric is the ratio of the number of bluefin tuna interactions (*i.e.*, the number of fish landed, discarded dead, and discarded alive) to the total weight of designated target species landings (in pounds). For the purposes of this section, the designated target species are swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks. A relatively low bluefin tuna interaction to designated species ratio ('bluefin tuna ratio') indicates that the vessel has successfully avoided catching bluefin tuna while fishing with pelagic longline gear in the performance metric period.

* * * * *

9. In § 635.15, revise paragraphs (c)(3)(iv), (k) introductory text, and (k)(4)(iii) to read as follows:

§ 635.15 Individual bluefin tuna quotas.

* * * * *

(c) * * *

(3) * * *

(iv) *Temporary prohibition of leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

* * * * *

(k) *Initial IBQ shares.* During year one of implementation of the IBQ Program described in this section, NMFS will issue IBQ shares to eligible Atlantic Tunas Longline category LAP holders, as specified in paragraph (k)(1) of this section. New entrants to the pelagic longline fishery would need to obtain an Atlantic Tunas Longline category LAP, as well as other required LAPs, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (c) of this section if the LAPs acquired did not qualify for an initial IBQ share.

* * * * *

(4) * * *

(iii) *Items subject to IAD and appeal.* The only items subject to an IAD or appeal are: Initial IBQ share eligibility based on ownership of an active vessel with a valid Atlantic Tunas Longline category LAP combined with the required shark and swordfish LAPs; the accuracy of

NMFS records regarding that vessel's amount of designated species landings and/or bluefin interactions; and correct assignment of target species landings and bluefin interactions to the vessel owner/permit holder. As described under paragraph (k)(1) of this section, the IBQ share formulas are based upon historical data associated with a permitted vessel. Because vessels may have changed ownership or permits may have been transferred during 2006 through 2012, the current owner of a permitted vessel may also appeal on the basis of historical changes in vessel ownership or permit transfers. Appeals based on hardship factors (*e.g.*, illness of vessel owner, divorce, etc.) will not be considered.

* * * * *

10. In § 635.19, revise paragraph (e)(4) to read as follows:

§ 635.19 Authorized gears.

* * * * *

(e) * * *

(4) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear swordfish LAP, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

* * * * *

11. In § 635.20, revise paragraph (b) to read as follows:

§ 635.20 Size limits.

* * * * *

(b) *BFT size classes.* If the head of a BFT is no longer attached, the size class of the BFT shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing notification of the adjustment with the Office of the Federal Register for publication.

* * * * *

12. In § 635.21, revise paragraphs (b)(1), (c)(3) and (4), (c)(5)(ii)(C)(I), (c)(5)(iii)(A), (c)(5)(iii)(B) introductory text, (c)(5)(iv), (d)(1)(iii)(D), (d)(2)(ii), and (g)(1) through (3) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) * * *

(1) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled “Careful Release Protocols for

Sea Turtle Release with Minimal Injury,” and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *

(3) A vessel that has been issued, or is required to have been issued, a LAP under this part may fish with pelagic longline gear in the Cape Hatteras gear restricted area described in paragraph (c)(2)(v) of this section, provided the vessel has been determined by NMFS to be “qualified,” (for the relevant year) using the performance metrics described in § 635.14.

(4) In the Gulf of Mexico, pelagic longline gear may not be fished or deployed from a vessel issued or required to have been issued a LAP under this part with live bait affixed to the hooks; and, a person aboard a vessel issued or required to have been issued a LAP under this part that has pelagic longline gear on board may not possess live baitfish, maintain live baitfish in any tank or well on board the vessel, or set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(5) * * *

(ii) * * *

(C) * * *

(I) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing

further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(vii)(D) of this section.

* * * * *

(iii) * * *

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Hook size, type, and bait.* Vessels fishing outside of the NED gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

* * * * *

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use, such as line clippers or cutters or

dehookers, as specified under paragraphs (c)(5)(i)(A) through (C), (G), and (H) through (K) of this section, must be approved as meeting the minimum design standards before being used.

NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(D) *Charleston Deep Artificial Reef*. Bounded by rhumb lines connecting, in order, the following points: 32° 9.65' N. lat., 79° 9.2' W. long.; 32° 7.155' N. lat., 79° 5.595' W. long.; 32° 2.36' N. lat., 79° 9.975' W. long.; 32° 5.04' N. lat., 79° 13.575' W. long.

* * * * *

(2) * * *

(ii) *Handling and release requirements*. Sea turtle bycatch mitigation gear, as required by paragraph (d)(2)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D, Prohibited Sharks, of Table 1 of appendix A to this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or

entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

* * * * *

(g) * * *

(1) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NMFS as required under part 229 of this title.

(2) While fishing with a drift gillnet, a vessel issued or required to be issued a Federal Atlantic commercial shark LAP and/or a Federal commercial smoothhound permit must conduct net checks at least every 2 hours to look for and remove any sea turtles, marine mammals, Atlantic sturgeon, or smalltooth sawfish, and the drift gillnet must remain attached to at least one vessel at one end, except during net checks. Smalltooth sawfish must not be removed from the water while being removed from the net.

(3) While fishing with a sink gillnet, vessels issued or required to be issued a Federal Atlantic commercial shark LAP and/or a Federal commercial smoothhound permit must limit the

soak time of the sink gillnet gear to no more than 24 hours, measured from the time the sink gillnet first enters the water to the time it is completely removed from the water. Smalltooth sawfish must not be removed from the water while being removed from the net.

* * * * *

13. In § 635.22, revise paragraphs (c)(1) and (5), (d), and (f) introductory text to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) * * *

(1) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a Federal Atlantic commercial shark vessel permit under § 635.4. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). If a commercial Atlantic shark quota is closed under § 635.28(b), the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a Federal Atlantic commercial shark vessel permit under § 635.4(e), only if that vessel has also been issued an HMS Charter/Headboat permit with a shark endorsement under § 635.4(b) and is engaged in a for-hire fishing trip. A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 may be required to use non-offset, corrodible circle hooks as specified in § 635.21(f) and (k) in order to

retain sharks per the retention limits specified in this section.

* * * * *

(5) Sharks listed in Table 1 of appendix A to this part that are not listed in this section, must be released by persons aboard a vessel that has not been issued a Federal Atlantic commercial shark vessel permit under § 635.4(e).

* * * * *

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4(d). The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit under § 635.4(b) only when the vessel is engaged in a for-hire trip.

* * * * *

(f) *North Atlantic swordfish*. The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement under § 635.4(b) and only when on a non for-hire trip; a directed, incidental or handgear swordfish LAP under § 635.4(e) and (f); a Swordfish General Commercial permit under § 635.4(f); an Incidental HMS Squid Trawl permit under § 635.4(n); or an HMS Commercial Caribbean Small boat

permit under § 635.4(o).

* * * * *

14. In § 635.23, revise paragraphs (a)(2) and (4) to read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued an Atlantic Tunas General category permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26(a) is not authorized from such vessel. On days other than RFDs, and when the General category is open, large medium or giant BFT may be caught and landed from such vessels up to the daily retention limit in effect for that day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register, except that previously designated RFDs may be

waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26(a).

* * * * *

15. In § 635.27, revise the paragraphs (b)(1) introductory text, (c)(1)(i)(A) and (B), and (d)(1) to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) *Commercial quotas.* The commercial quotas for sharks specified in this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks caught and landed commercially from state waters, even by fishermen without Federal shark permits, must be counted against the appropriate commercial quota. Any of the base quotas listed below, including regional and/or sub-regional base quotas, may be adjusted per paragraph (b)(2) of this section. Any sharks landed commercially as “unclassified” will be counted against the appropriate quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D, Prohibited Sharks, of Table 1 of appendix A to this part, may be retained except as authorized under § 635.32. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a

line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat., proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed swordfish LAP, a swordfish handgear LAP, an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) has been issued or is required to have been issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or under harvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semiannual periods:

One for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish LAP, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed LAP, a swordfish handgear LAP, an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

* * * * *

(d) * * *

(1) Unless adjusted under paragraph (d)(2) of this section or by an ICCAT recommendation, the annual landings limit is 250 Atlantic blue and white marlin, combined. Annual landings of roundscale spearfish are also included to the blue and white marlin annual landings limit. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the Federal Register for publication prior to the start of the next fishing year or as early as possible.

* * * * *

16. In § 635.28, revise paragraphs (a)(3) introductory text, (b)(1)(iv), (b)(7), (c)(3), and (d) to read as follows:

§ 635.28 Fishery closures.

* * * * *

(a) * * *

(3) When the Atlantic Tunas Longline category quota is reached, projected to be reached, or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the closure action, vessels that have been issued or are required to have a LAP under § 635.4 and that have pelagic longline gear onboard are prohibited from leaving port, regardless of the amount of bluefin tuna quota allocation remaining to each vessel or the amount of fishery quota remaining for other species. In addition to providing notice in the Federal Register, NMFS will also notify vessels of any closures and their timing via VMS and may use other electronic methods, such as email. Vessels would be required to return to port prior to the closure date/time. When considering whether to close or reopen the Longline category quota, NMFS may consider the following factors:

* * * * *

(b) * * *

(1) * * *

(iv) The species is a prohibited species as listed under heading D, Prohibited Species of Table 1 of appendix A to this part; or

* * * * *

(7) If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess, retain, land, or sell sharks.

(c) * * *

(3) *Bluefin tuna Longline category closure.* If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess or land any North Atlantic swordfish or bluefin tuna.

(d) *Northern albacore tuna.* When the annual fishery quota specified in § 635.27(e) is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. When the fishery for Northern albacore tuna is closed, Northern albacore tuna may not be retained. If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess or land any Northern albacore tuna.

17. In § 635.31, revise paragraph (d)(2) to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(d) * * *

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part, and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii). Atlantic swordfish dealers may first receive a swordfish from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a)(3).

18. In § 635.34, revise the introductory text of paragraph (c) to read as follows:

§ 635.34 Adjustment of management measures.

* * * * *

(c) NMFS may add species to the prohibited shark species group specified in heading D, Prohibited Sharks, of Table 1 of appendix A to this part if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

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19. In § 635.40, revise the introductory text of paragraph (b)(1) and remove and reserve paragraph (b)(3) to read as follows:

§ 635.40 Restrictions to enhance conservation.

* * * * *

(b) * * *

(1) For the purposes of paragraph (a) of this section and section 971d(6)(a) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

* * * * *

20. In § 635.71 revise paragraphs (a)(53), (b)(20), (36) through (38), and (40), and (e)(10) and (11) to read as follows:

§ 635.71 Restrictions on sale and purchase.

* * * * *

(a) * * *

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, “buoy gear” as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access 125 permit or a swordfish handgear LAP in accordance with § 635.4(f) or a valid

HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

* * * * *

(b) * * *

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Atlantic Tunas Purse Seine category LAPs may approach closer to each other.

* * * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(vii)(A) and (c)(5)(iii)(B)(3).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as specified in § 635.21(c)(5)(iii)(B).

(38) As specified in § 635.21(c)(5)(iii)(B)(3), possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, when possessing onboard both pelagic longline gear and green-stick gear as defined in § 635.2.

* * * * *

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as specified at § 635.21(c)(5)(iii)(B)(3) or (c)(2)(vii)(A).

* * * * *

(e) * * *

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, “buoy gear” as defined at § 635.2, unless, as specified in § 635.19(e)(3), the vessel owner has been issued a swordfish directed LAP or a swordfish handgear LAP in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear LAP category, or issued a valid HMS Commercial Caribbean Small Boat permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(h).

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